UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/703,329	10/31/2000	Dave Parker	005220.P002	3235

7590 09/09/2009

Blakely Sokoloff Taylor & Zafman LLP
Daniel E Ovanezian
12400 Wilshire Boulevard
7th Floor
Los Angeles, CA 90025

EXAMINER	
ALAM, UZMA	
ART UNIT	PAPER NUMBER
2457	

MAIL DATE	DELIVERY MODE
09/09/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAVE PARKER, DAVID D. FARALDO II, JON PRALL, PAUL SANTINELLI, TERESA RAMANAN, LANCE PETERSON, ADAM PINGEL, and MIKE DEIBLER

Appeal 2008-006297
Application 09/703,329[1]
Technology Center 2400

Decided: September 9, 2009

Before LEE E. BARRETT, LANCE LEONARD BARRY, and JAY P. LUCAS, *Administrative Patent Judges*.

LUCAS, *Administrative Patent Judge*.

DECISION ON APPEAL

---

[1] Application filed October 31, 2000. The real party in interest is Red Hat, Inc., of Raleigh N.C.

STATEMENT OF THE CASE

Appellants appeal from a final rejection of claims 1-7, 9-14, 16-18, 20-24, 26-28, 30-33, 42, 43, 45, 46, and 48 under authority of 35 U.S.C. § 134(a). Claims 8, 15, 19, 25, 29, 34-37, 44, and 47 are canceled (App. Br. 4). Claims 38-41 are not entered (App. Br. 4). The Board of Patent Appeals and Interferences (BPAI) has jurisdiction under 35 U.S.C. § 6(b).

Appellants' invention relates to a method and apparatus for monitoring a network site, and for reacting in the event of a failure or other happening. In the words of Appellants:

> The disadvantage of hosting a company's infrastructure at a data center is the overhead of trying to monitor, manage, and support that hosted infrastructure. Data centers may not provide any information on systems and services running from the switchport down. The result is that companies that host may have no critical view into what is actually happening on the infrastructure for which they have invested large amounts of money.
>
> The present invention pertains to a method of and apparatus for administration of a network site. In one embodiment, the method may include monitoring a parameter of a host system for a predetermined event. A notification may be generated upon the occurrence of the predetermined event to a first person in a hierarchy and escalated to a second person in the hierarchy when the first person fails to acknowledge the notification in a time period.

(Spec 1, l. 18 to 2, l. 3; 4, ll. 2-16)

Claim 1 is illustrative of the invention:

1. A method, comprising:

> accessing a port of a host system and logging into said host system by a satellite system to monitor an internal parameter for a predetermined event related to the host system;
>
> transferring data about the predetermined event from the satellite system to a monitoring operations center;
>
> generating, by the monitoring operations center, a notification upon an occurrence of the predetermined event to a first person in a hierarchy; and
>
> escalating, by the monitoring operations center, the notification to a second person in the hierarchy when the first person fails to acknowledge the notification in a time period.

The prior art relied upon by the Examiner in rejecting the claims on appeal is:

Carleton	US 2001/0044840 A1	Nov. 22, 2001 (filed on Dec. 12, 2001)

REJECTIONS

The Examiner rejects the claims as follows:

R1: Claims 1-7, 9-14, 16-18, 20-24, 26-28, 30-33, 42, 43, 45, 46, and 48 stand rejected under 35 U.S.C. § 102(e) for being anticipated by Carleton.

Groups of Claims:

Although there is only one rejection, the arguments are divided into four groups, according to the following independent claims: 1 and 26; 7; 20; and 30. We will thus address each of those groups, including in each the claims dependent on those independent claims. The respective independent claims are representative. *See* 37 C.F.R. § 41.37(c)(vii).

Appellants generally contend that the claimed subject matter is not anticipated by Carleton for failure of the reference to teach the claimed limitations. The Examiner contends that each of the four groups of claims is properly rejected.

Rather than repeat the arguments of Appellants or the Examiner, we make reference to the Briefs and the Answer for their respective details. Only those arguments actually made by Appellants have been considered in this opinion. Arguments that Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived.

We affirm-in-part.

ISSUE

The issue is whether Appellants have shown that the Examiner erred in rejecting the claims under 35 U.S.C. § 102(e). For each group of claims, the issue will be stated below.

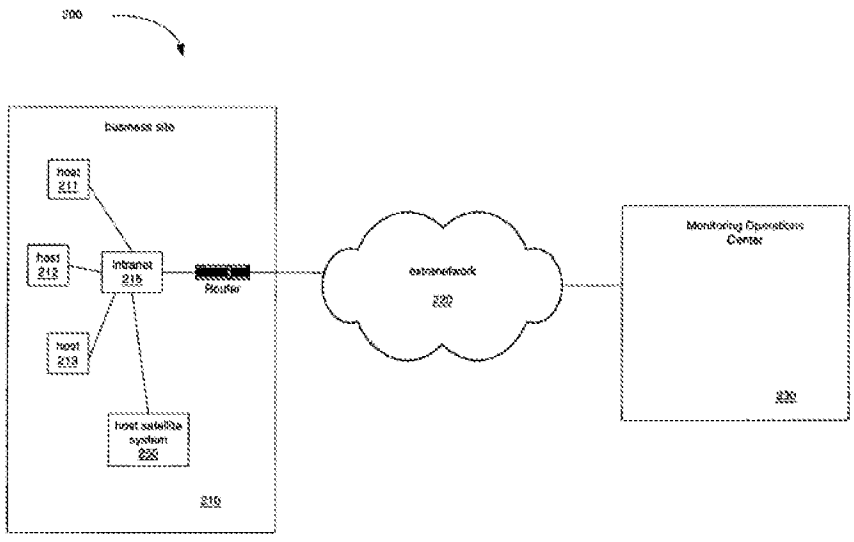
FINDINGS OF FACT

The record supports the following findings of fact (FF) by a preponderance of the evidence.

1. Appellants have invented a system and method for monitoring the hardware and software host components in a business site network (Spec. 8, ll. 1-8). A host satellite system (250) is connected, perhaps by an intranet (215), to each of the hosts. For monitoring the host systems' internal states and resources (*e.g.,* 211-213), the host satellite system logs into each host (Spec. 14, l. 18). On the occurrence of an event, such as a

device failure, notification is sent to a monitoring operations center (MOC), 230 (Spec. 8, l. 5). If the notification does not result in a response from one user, the notification is escalated to others (Spec. 18, l. 2; 4, l. 15). To reduce the load on hosts of handling service checks, service checks are interleaved over a number of hosts in accordance with a service interleave factor (Spec. 18, l. 13 to 19, l. 3). The interleaving creates delays between checks, reducing load spikes on a host (*id.*). Different types of data collected by the host satellite system 250 are separately queued with the different queues potentially having different priority at the MOC (Spec. 16, ll. 9-16). The data may be analyzed to provide suggestions of probable causes of and solutions to problems reported on the system (Spec. 22, l. 14).

2. Appellants' Figure 2A.



Appellants' Figure 2A indicating the site monitoring system is shown.

3. The reference Carleton teaches a method and system for monitoring a large business network (¶ [0008]). A client server 22 is attached to the secure client network being monitored (Fig. 1; ¶ [0049]). On occurrence of an event, say a problem, alerts are sent to a remote network monitoring and administration system (service center) 20 (Fig. 1). User in the service center log into the system prior to gaining access. If the alerts are not treated within a time period, they are escalated up a service chain (¶ [0009]). Different port numbers may be selected to attend to specific devices (Fig. 12). Information on the alerts is maintained in different categories of devices, indicating the device that caused the problem (Fig. 22, ¶ [0084]).

4. Carleton, Figure 1.

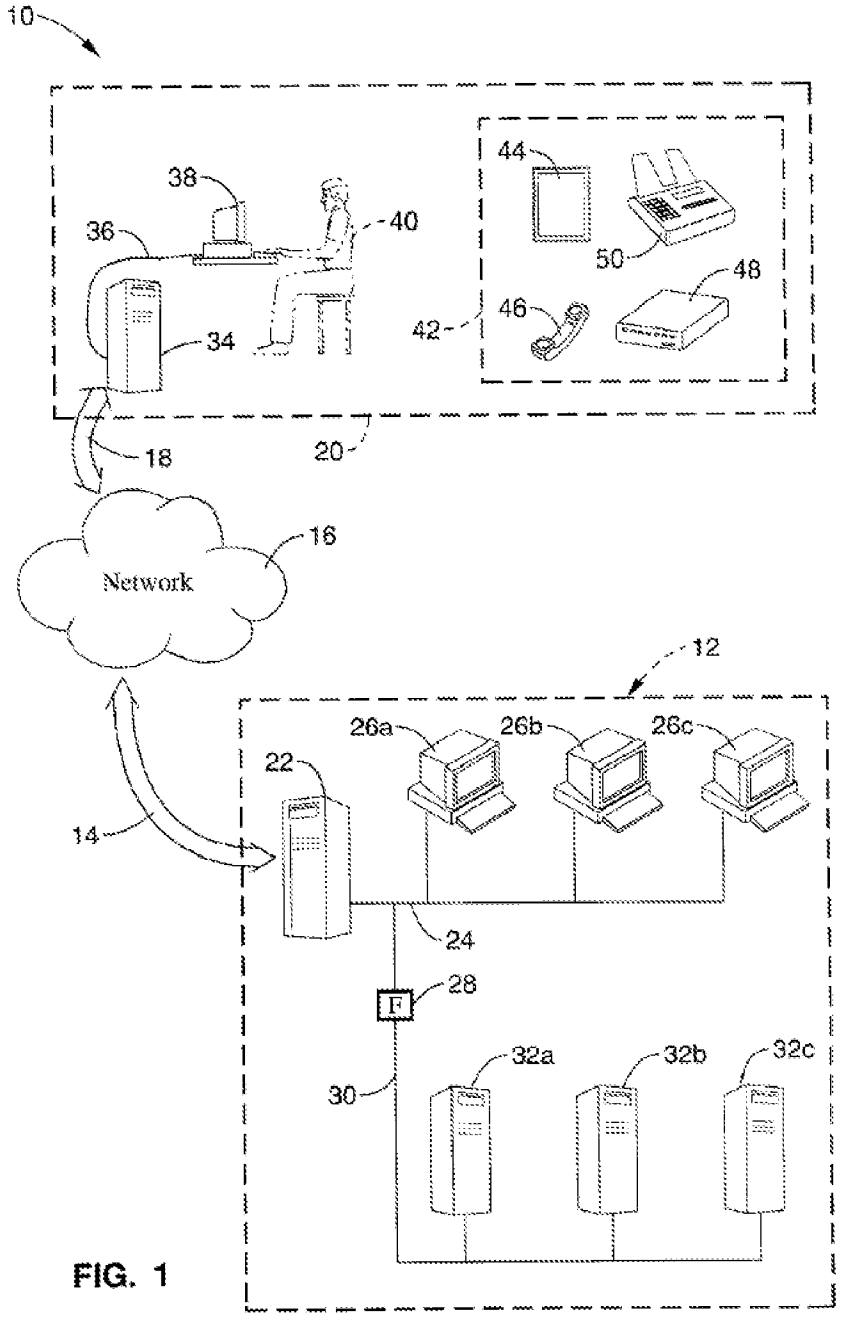


FIG. 1

Figure 1 of Carleton indicates his network and monitoring system.

PRINCIPLES OF LAW

"In reviewing the [E]xaminer's decision on appeal, the Board must necessarily weigh all of the evidence and argument." *In re Oetiker*, 977 F.2d 1443, 1445 (Fed. Cir. 1992).

In rejecting claims under 35 U.S.C. § 102, "[a] single prior art reference that discloses, either expressly or inherently, each limitation of a claim invalidates that claim by anticipation." *Perricone v. Medicis Pharm. Corp.,* 432 F.3d 1368, 1375-76 (Fed. Cir. 2005) (citation omitted).

"Anticipation of a patent claim requires a finding that the claim at issue 'reads on' a prior art reference." *Atlas Powder Co. v. IRECO, Inc.*, 190 F.3d 1342, 1346 (Fed Cir. 1999) ("In other words, if granting patent protection on the disputed claim would allow the patentee to exclude the public from practicing the prior art, then that claim is anticipated, regardless of whether it also covers subject matter not in the prior art.") (internal citations omitted).

ANALYSIS

From our review of the administrative record, we find that the Examiner has presented his statement of a prima facie case for the rejection of Appellants' claims under 35 U.S.C. § 102(e). The prima facie case is presented on pages 3 to 12 of the Examiner's Answer. In opposition, Appellants present a number of arguments.

Arguments with respect to the rejection of independent claims 1 and 26 under 35 U.S.C. § 102(e) [R1]

Appellants first argue that Carleton teaches monitoring only external parameters of a host system, not the internal parameter that is claimed in claim 1 (App. Br. 10, bottom). In Carleton, the monitoring indicates the status of the various devices within the host system being monitored, such as the status of a printer (¶ [0084]). The printer being a device in or on the network, Appellants' argument is not convincing.

Appellants next argue that Carleton does not disclose a satellite system logging into a host system, as required by claim 1 (App. Br. 11, bottom). In more detail, Appellants state: "Examiner is confusing a user logging into a administration system, as described in Carleton, with a satellite system logging into a host system, as recited in claim 1." (App. Br. 12, middle).

After carefully studying the Carleton publication, we agree with the Appellants. In paragraph [0058], the prospective user is indicated as logging into the system prior to gaining access to the network information. (*See also* ¶ [0051].) However, client server 22 is indicated as being connected to internal network 24 of the business; no logging onto the business system by the client server 22 is described in Carleton. Thus, Appellants have demonstrated error in the rejection of claim 1 and those claims dependent on it.

By contrast, when Appellants argue the same defect for the rejection of claim 26 and its dependent claims, the argument fails as not supported by the claim language (App. Br. 17, bottom). Claim 26 only requires means for

logging into a host system and does not specify that the logging in is performed by a satellite system. As Carleton teaches the more general logging in (discussed above), the rejection of claim 26 and its dependent claims is not based on an error.

Arguments with respect to the rejection of claim 7 and dependent claim 43 under 35 U.S.C. § 102(e) [R1]

Appellants argue that claim 7 was rejected in error, as Carleton fails to teach queuing different types of data in different queues or prioritizing that queued data. (App. Br. 13, middle).

The Examiner has read the claimed "predetermined event" as an alarm condition in Carleton, which we find to be a reasonable interpretation of the claim. (Examiner's Answer 15, middle). Carleton teaches queuing data about the alarm condition in multiple different queues, indicating the type of devices on the network and listing those which caused the alarm condition by type of devices. For example, Figure 22 indicates the types of devices on the network (printers, servers, *etc.*) and their specific network locations. The printers that caused the "printer alarm" are indicated (¶ [0084]).

Considering this reading of the claim onto the reference, we decline to find error in the rejection of claims 7 and 43.

Arguments with respect to the rejection of claim 20 and those dependent thereon under 35 U.S.C. § 102([R1]

Appellants argue that independent claim 20 and its dependent claims are not anticipated by Carleton, as Carleton does not teach or suggest

providing a probable cause of a predetermined event or its solution (App. Br. 16, middle).

Consider the reading of Carleton as proposed in the section just above. The "printer alarm" is the predetermined event, and the listing of the errant printer causing the alarm is the "providing a suggestion of the probable cause of the predetermined event", as claimed (¶ [0084]). According to the Patent Application Publication, "[i]n Fig. 22 the headline "Printers" and the specific device … are highlighted to indicate the cause of the current printer alarm." (*Id.*). We thus do not find error in the Examiner's rejection of these claims.

Arguments with respect to the rejection of claim 30 and those dependent thereon under 35 U.S.C. § 35 U.S.C. § 102(e) [R1]

Appellants argue that, "Carleton does not disclose interleaving, an interleave factor, or any terms that are synonymous to interleaving or an interleave factor." (App. Br. 20, bottom).

The Examiner indicates that, though the word "interleaving" is not used, the principle is disclosed in the reference and applied in the same manner as claimed (Ans. 20, top). We consider the referenced paragraphs [0072] and [0073] of Carleton and find a recitation of polling periods, backoff values, and selecting the delay time between polling attempts. This explanation is congruent with the Appellants' claimed interleaving of service checks and the background in the Specification upon which these claims are based (Spec. 18, ll. 13-21).

We are thus led to find that Appellants' arguments are unconvincing, and we decline to find error in the rejection of claims 30 and those dependent thereon.

CONCLUSIONS OF LAW

Based on the findings of facts and analysis above, we conclude that the Examiner erred in rejecting claims 1-6, 9-14, 16-18, 42, and 46.

By the same analysis and facts, we find the rejection of claims 7 and 43; 20-24 and 45; 26-28; and 30-33, and 48 is without error.

DECISION

The Examiner's rejection of claims 1-6, 9-14, 16-18, 42, and 46 is reversed.

The Examiner's rejection of claims 7 and 43; 20-24 and 45; 26-28; and 30-33, and 48 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

peb

BLAKELY SOKOLOFF TAYLOR & ZAFMAN LLP
DANIEL E OVANEZIAN
12400 WILSHIRE BOULEVARD
7TH FLOOR
LOS ANGELES, CA 90025